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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/801,873      | 03/16/2004  | Paul H. Comerford    | 1351                | 2965             |

7590

07/15/2004

Mr. Loyal M. Hanson  
Hanson Law Corporation  
P.O. Box 430  
Fallbrook, CA 92088-0430

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| EXAMINER |
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ABBOTT, YVONNE RENEE

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| ART UNIT | PAPER NUMBER |
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3644

DATE MAILED: 07/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/801,873

Applicant(s)

COMERFORD, PAUL H.

Examiner

Yvonne R. Abbott

Art Unit

3644

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 16 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 12 is/are allowed.
- 6) ☒ Claim(s) 1-8 and 13 is/are rejected.
- 7) ☒ Claim(s) 9-11 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Claim Objections***

1. Claim 12 is objected to because of the following informalities: in line 33, "removable" should be replaced with --removably--. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Boshears (5,875,737). Boshears discloses a cat toy apparatus comprising a base having a hollow interior (52); a motor-supporting structure (68) having a central axis and a hollow interior extending along the central axis, which motor-supporting structure is connected to the base and so arranged that with the base resting on a horizontal support surface, the motor-supporting structure extends upwardly from the base with the central axis disposed vertically, an electric motor (80) located within the hollow interior of the motor-supporting structure in alignment with the central axis; a object-holding arm (70) connected to the motor, the object-holding arm including an elongated member having a proximal end portion connected to the drive shaft (78) of the motor and a distal end portion disposed upwardly and radially outwardly from the motor-supporting structure, a cat-attracting object (54), a flexible line (90) connecting the cat-attracting object to

Art Unit: 3644

the distal end portion of the object-holding arm; and means (82) for powering the electric motor in order to rotate the object-holding arm and thereby move the cat-attracting object about the motor-supporting structure.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-8 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Berkovich (5,103,770) in view of Udelle et al. (5,595,141). Berkovich shows a pet exercising device comprising a base (14), a motor-supporting structure (12) having a central axis and a hollow interior extending along the central axis, which motor-supporting structure is connected to the base and so arranged that with the base resting on a horizontal support surface, the motor-supporting structure extends upwardly from the base with the central axis disposed vertically; an electric motor (22) located within the hollow interior of the motor-supporting structure in alignment with the central axis; an object-holding arm (28, 16) connected to the motor, the object-holding arm including an elongated member having a proximal end portion connected to the motor and a distal end portion disposed upwardly and radially outwardly from the motor-supporting structure, a cat-attracting object (18), a flexible line (20) connecting the cat-attracting object to the distal end portion of the object-holding arm; and means

Art Unit: 3644

(24) for powering the electric motor in order to rotate the object-holding arm and thereby move the cat-attracting object about the motor-supporting structure; wherein the motor is controlled by electronic circuitry which works in conjunction with control knobs (34 and 36) regulate the speed control means (30) and direction control means (32) of the motor and arm (16); knob (38) allows the operator to determine the length of the interval between changes of the rotational direction, and if desired, the operator can use control knob (42) to set the timer (40) to cause the device to be activated at a desired future time; and wherein a pressure-sensitive switch (44) may be attached to sense movement of the drive shaft (i.e. if a cat bats the arm (16) or toy (18) with its paw, thereby indicating the animal's proximity to the device, the motion will be transmitted through arm (16) and drive shaft (28) to the switch (44) causing the motor to run "ON"); and wherein a signal from switch (44) may be passed to the timer (40) to provide a predetermined period of operation, after which the timer will turn the motor "OFF". Berkovich does not specifically disclose that the base has a hollow interior, or that the electronic circuitry is located therein. Udelle et al. teach a hollow base and that the electronic circuit may be located within the hollow interior of the base. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide that the base of Berkovich is hollow as is taught by Udelle et al. in order to facilitate storage of items (such as replacement cat attractants, batteries, etc) beneath the device, or to house additional circuitry requirements (cords, wires, etc).

6. Claims 1 and 2 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stewart et al. (6,345,593) in view of Berkovich (5,103,770). Stewart et al. shows a cat

Art Unit: 3644

toy apparatus comprising a base (28) having a hollow interior, a motor-supporting structure (22) having a central axis and a hollow interior extending along the central axis, which motor-supporting structure is connected to the base and so arranged that with the base resting on a horizontal support surface, the motor-supporting structure extends upwardly from the base with the central axis disposed vertically; an electric motor (18) located within the hollow interior of the motor-supporting structure in alignment with the central axis; an object-holding arm (16) connected to the motor, the object-holding arm including an elongated member having a proximal end portion connected to the motor and a distal end portion disposed upwardly and radially outwardly from the motor-supporting structure, a cat-attracting object (14); and means (71) for powering the electric motor in order to rotate the object-holding arm and thereby move the cat-attracting object about the motor-supporting structure. Stewart et al., however, does not disclose a flexible line connecting the cat-attracting object to the distal end portion of the object-holding arm. Berkovich teaches a pet exercising device having a flexible line connecting the cat attracting object to the object holding arm. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide that the cat attracting object be attached to a flexible line since the animal will most likely make contact with the object, and flexibility in the line may prevent inadvertent tipping of the entire structure upon contact with the animal.

***Allowable Subject Matter***

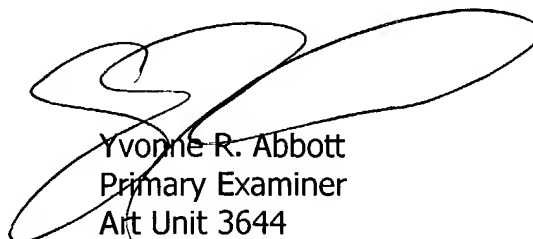
7. Claims 9-11 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

8. Claim 12 is allowable.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yvonne R. Abbott whose telephone number is (703)308-2866. The examiner can normally be reached on 7:30-6:00 flex schedule.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael J. Carone can be reached on (703)306-4198. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Yvonne R. Abbott  
Primary Examiner  
Art Unit 3644